

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

In the Matter of:)	
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)	
Mark and Dan Johnson)	Docket No. CWA-08-2003-0098
Lake County, SD)	
)	
Respondents.)	

CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency (“EPA”), Region 8, and Respondents, Mark and Dan Johnson, by their undersigned attorneys, hereby consent and agree as follows:

1. On September 25, 2003, EPA issued an Administrative Complaint, and on May 26, 2004, EPA issued an Amended Administrative Complaint (“Complaint”) alleging that the Respondents had violated section 301(a) of the Clean Water Act (“Act” or “CWA”), 33 U.S.C. § 1311(a). The Complaint proposed an administrative civil penalty for the violations alleged therein, under section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B).

2. Pursuant to 40 C.F.R. § 22.18(b)(2), the Respondents admit the jurisdictional allegations of the Complaint and neither admit nor deny the specific factual allegations of the Complaint. The Respondents do not admit that the wetlands referenced in the Complaint are “waters of the United States” as defined in 33 C.F.R. § 328.3(a) or “navigable waters” as defined in section 502(7) of the CWA, 33 U.S.C. § 1362(7).

3. The Respondents waive their right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint. They also waive their right to appeal any final order resulting from this Consent Agreement ("Agreement").

4. This Agreement, upon incorporation into a final consent order, will apply to and be binding upon EPA and upon the Respondents and the Respondents' heirs, successors and assigns. This Agreement contains all terms of the settlement agreed to by the parties.

5. The Respondents consent and agree to pay a civil penalty in the amount of \$35,300.50 in accordance with the following payment schedule:

<u>INSTALLMENT NUMBER</u>	<u>AMOUNT</u>	<u>DUE DATE</u>
First Installment	\$15,000.00	June 30, 2004
Second Installment	\$10,150.25	June 30, 2005
Third Installment	\$10,150.25	June 30, 2006

All payments shall be made by remitting a cashier's or certified check for the installment amount, including the name and docket number of this case, payable to "Treasurer, United States of America," to:

Mellon Bank
P.O. Box 360859
Pittsburgh, PA 15251-6859

Any payment made via overnight delivery shall be sent to:

U.S. EPA, 360859
Mellon Bank
Client Service Center, Room 154-0670
500 Ross Street
Pittsburgh, PA 15262-0001

A copy of the check and any enclosed documentation shall be sent simultaneously to:

Monica Heimdal (8ENF-W)
Environmental Engineer
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

and

Tina Artemis (8RC)
Regional Hearing Clerk
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

6. A payment is considered late if it is not received by Mellon Bank on the stated due date. Payments must be received by 11:00 a.m. EST to be considered as received that day.

7. In the event payment is not received by the specified due date, an additional amount of interest shall accrue from the payment due date at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. Interest will continue to accrue until the payment is received in full.

8. In addition to the accrual of interest specified in Paragraph 7 of this Agreement, a handling charge of fifteen dollars (\$15.00) shall be assessed the 61st day from the date a penalty installment is due, and each subsequent 30-day period that the penalty installment, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if any penalty installment payment is not received within 90 days of the due date. Payments are first applied to accrued interest, penalty and/or handling charge; the balance is then applied to the outstanding principal amount.

9. The Respondents agree that the penalty shall never be claimed as a federal or other tax deduction or credit.

10. The Respondents further agree and consent that if they fail to pay any of the installments by the applicable due date specified in Paragraph 5 of this Agreement, then at EPA's discretion the full penalty amount proposed in the Complaint shall become due and owing by Respondents. This paragraph shall apply only if EPA provides Respondents with written notice that a payment is past due and if the Respondents do not pay all past due amounts with interest within thirty days of receipt of EPA's notification.

11. The Compliance Order (Findings of Violation and Order for Compliance, Docket No. CWA-08-2002-20) that EPA issued to the Respondents on May 6, 2002, as amended on June 17, 2002, shall remain in full force and effect and the Respondents' obligation to comply therewith shall continue unabated.

12. Nothing in this Agreement shall relieve the Respondents of the duty to comply with the CWA and its implementing regulations.

13. Failure by the Respondents to comply with any of the terms of this Agreement shall constitute a breach of this Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Agreement and for such other relief as may be appropriate.

14. Nothing in this Agreement shall be construed as a waiver by EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of any failure of the Respondents to comply with this Agreement.

15. The parties agree to submit this Agreement to the Regional Judicial Officer for EPA Region 8, with a request that it be incorporated into a final consent order, after the public has been provided with an opportunity to comment on this agreement.

16. Each party shall bear its own costs and attorneys' fees in this matter.

17. This Agreement, upon incorporation into a final consent order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the penalties sought in the Complaint.

18. Each undersigned representative of the Respondents certifies that he is fully authorized to enter into this Agreement and to bind the Respondents to its terms.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant

Date: 22 June 2004

By: David J. Janik
Michael T. Risner, Director
David J. Janik
Supervisory Enforcement Attorney
Legal Enforcement Program

Date: 24 June 2004

By: SIGNED
Diane Sipe, Director
Water Technical Enforcement Program

MARK AND DAN JOHNSON,
Respondents

Date: 6/21/04

By: SIGNED
Gregg S. Greenfield
Michael F. Tobin
Boyce, Greenfield, Pashby & Welk
101 North Phillips Avenue, Suite 600
Sioux Falls, SD 57117-5015
Counsel for Respondents

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

In the Matter of:

**Mark and Dan Johnson
Lake County, SD**

Respondents.

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Docket No. CWA-08-2003-0098

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby ORDERED to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

June 28, 2004
DATE

SIGNED
Alfred C. Smith
Regional Judicial Officer

Certificate of Service

The undersigned certifies that the original of the attached Consent Agreement/Final Order in the matter of **Mark and Dan Johnson, Docket No. CWA-08-2003-0098** was filed with the Regional Hearing Clerk on _____, 2004.

Further, the undersigned certifies that on the date indicated below, a true and correct copy of this document was delivered to Margaret J. (Peggy) Livingston, Enforcement Attorney, US EPA Region 8, 999 18th St., Suite 300, Denver, CO 80202, and that true and correct copies of this document were sent as follows to:

Gregg S. Greenfield, Attorney
Michael F. Tobin, Attorney
Boyce, Greenfield, Pashby & Welk, LLP
101 North Phillips Avenue, Suite 600
P.O. Box 5015
Sioux Falls, SD 57117-5015
(by certified mail, return receipt requested)

and

The Honorable Susan L. Biro
Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave. N.W.
Washington, D.C. 20460
(by pouch mail)

Date: 6/28/04, 2004.

Eduardo J. Perez for/
Tina Artemis
Regional Hearing Clerk

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON JUNE 28, 2004.